



THE CITY OF NEW YORK  
LAW DEPARTMENT

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January 14, 2010

**BY ECF**

Honorable Brian M. Cogan  
United States District Judge  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: Carl A. Smith v. City of New York, et al., 09 CV 3537 (BMC)  
Hachim Mondesir, et al. v. City of New York, et al., 09 CV 3624 (RRM) (JO)

Your Honor:

Enclosed please find a STIPULATION AND ORDER OF SETTLEMENT AND DISCONTINUANCE which has been executed by the parties in Carl A. Smith v. City of New York, et al. We respectfully request that Your Honor endorse the enclosed STIPULATION.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "B. Francolla", written over a horizontal line.

Brian Francolla  
Assistant Corporation Counsel  
Special Federal Litigation Division

cc: Richard Cardinale, Esq. (By ECF)  
Attorney for Plaintiff Smith  
26 Court Street, Suite 1815  
Brooklyn, New York 11242

Edward Friedman, Esq. (By ECF)  
Attorney for Plaintiffs Mondesir, Mondesir, Alcide and Castor  
26 Court Street, Suite 1903  
Brooklyn, New York 11242

Shawn D. Fabian, Esq. (by ECF)  
Assistant Corporation Counsel, Office of the Corporation Counsel  
Attorney for Defendant City of New York in Hachim Mondesir, et al. v. City of New York, et al.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
CARL A. SMITH,

Plaintiff,

-against-

**STIPULATION AND  
ORDER OF  
SETTLEMENT AND  
DISCONTINUANCE**

THE CITY OF NEW YORK, POLICE OFFICER  
CHRIS J. MADISON, POLICE OFFICER GERALD  
CUCHIARA, tax # 938303, SERGEANT JOHN  
KOCHER, tax # 924034,

09 CV 3537 (BMC)

Defendants.  
-----X

**WHEREAS**, plaintiff commenced this action by filing a complaint on or about August 14, 2009, and an amended complaint on or about November 14, 2009, alleging that defendants violated his constitutional rights; and

**WHEREAS**, defendants have denied any and all liability arising out of plaintiff's allegations; and

**WHEREAS**, the parties now desire to resolve the issues raised in this litigation, without further proceedings and without admitting any fault or liability; and

**WHEREAS**, plaintiff has authorized counsel to settle this matter as against defendants on the terms enumerated below;

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned, as follows:

1. The above-referenced action is hereby dismissed with prejudice, and without costs, expenses, or fees in excess of the amount specified in paragraph "2" below.

2. The City of New York hereby agrees to pay plaintiff CARL SMITH the sum of TWENTY TWO THOUSAND AND FIVE HUNDRED DOLLARS (\$22,500.00) in full satisfaction of all claims, inclusive of claims for costs, expenses and attorney's fees. In consideration for the payment of this sum, plaintiff agrees to the dismissal of all claims against the City of New York and all individually named defendants, and to release all defendants and any present or former employees or agents of the City of New York from any and all liability, claims, or rights of action that have or could have been alleged by plaintiff in this action arising out of the events alleged in the complaint and the amended complaint in this action, including claims for costs, expenses and attorney's fees.

3. Plaintiff shall execute and deliver to City defendant's attorney all documents necessary to effect this settlement, including, without limitation, a release based on the terms of paragraph "2" above and an Affidavit of Status of Liens.

4. Nothing contained herein shall be deemed to be an admission by defendants or the City of New York that they have in any manner or way violated plaintiff's rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules, regulations or bylaws of any department or subdivision of the City of New York. This stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations.

5. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York.

6. This Stipulation and Order contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written

agreement entered into prior to the execution of this Stipulation and Order regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

Dated: New York, New York  
\_\_\_\_\_, 2010

Richard Cardinale, Esq.  
Attorney for Plaintiff  
26 Court Street, Suite 1815  
Brooklyn, New York 11242  
(718) 624-9391

By: \_\_\_\_\_

Richard Cardinale, Esq.

MICHAEL A. CARDOZO  
Corporation Counsel of the City of New  
York  
Attorney for Defendants City of New York and  
Police Officer Madison  
100 Church Street  
New York, New York 10007  
(212) 788-0988

By: \_\_\_\_\_

Brian Francolla  
Assistant Corporation Counsel

SO ORDERED:

\_\_\_\_\_  
U.S.D.J.